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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,247	09/29/2003	Donald E. Weder	8403.968	3184

30589 7590 02/25/2004

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PO BOX 16370
OKLAHOMA CITY, OK 73113

EXAMINER

PALO, FRANCIS T

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 02/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/674,247

Applicant(s)

WEDER, DONALD E.

Examiner

Francis T. Palo

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/29/03</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Specification

1. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. **Claims 1-22** are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over **claims 1, 4 and 5** of U.S. Patent No. 5,829,194.

Although the conflicting claims are not identical, they are not patentably distinct from each other because:

Regarding instant **independent claim-1**:

The method for wrapping cited in the instant independent claim comprising providing a sleeve formed of a laminated material comprising a layer of cloth and a layer of polymeric film and a cinching tab connected to the outer peripheral surface of the sleeve and having a bonding material disposed thereon, is broadly encompassed by the flexible sleeve of conflicting '194 independent claim-1 and conflicting '194 dependent claim-5.

Specifically, the conflicting independent claim recites a flexible sleeve having a tab connected to the outer peripheral surface of the lower portion of the sleeve for tightening the lower portion of the sleeve, and a bonding material for bondingly connecting the free end of the tab to the sleeve.

Furthermore, the flexible sleeve recited in the conflicting '194 independent claim-1 is defined in the conflicting '194 dependent claim as being constructed from polymer film, fiber, cloth, burlap and laminations or combinations thereof, which would encompass the laminated material cited in the instant independent claim.

Regarding instant **independent claims 4 and 8**:

The discussion above regarding claim-1 is relied upon for the features common to the instant sleeves.

The method for wrapping (instant claim-4) and the decorative sleeve (instant claim-8) as cited in the instant independent claims is broadly encompassed by the flexible sleeve of conflicting '194 independent claim-1 and conflicting '194 dependent claim-5.

Specifically, the recitation of "laminations or combinations thereof" as cited in the conflicting '194 dependent claim-5, would encompass the limitation of "at least a portion of the layer of polymeric film laminated to the layer of cloth" as cited in the instant independent claims; and "positioning a banding element about a portion of the sleeve" as cited in the instant independent claim-4, is encompassed by the tab recited in the conflicting '194 independent claim-1.

Regarding instant **independent claims 10 and 13**:

The discussions above regarding the laminated sleeves of the instant independent claims 1, 4 and 8 apply to and encompass the laminated materials cited in the instant independent claims 10 and 13.

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Regarding instant **independent claims 17, 18 and 20:**

The instant independent claims 17, 18 and 20 are obvious variations of the respective instant independent claims 1, 4 and 8, as such the discussions above regarding the instant independent claims 1, 4 and 8 apply to and encompass the laminated three layer sleeves of instant independent claims 17, 18 and 20.

Specifically, the three-layer laminations cited in the instant independent claims 17, 18 and 20 are broadly encompassed by the recitation of the conflicting dependent '194 claim-5 wherein "laminations or combinations thereof" is cited.

Regarding instant **independent claims 21 and 22:**

The discussion immediately above regarding the laminated sleeves of the instant independent claims 17, 18 and 20 apply to and encompass the laminated materials cited in the instant independent claims 21 and 22.

Regarding instant **dependent claims 2, 5, 9, 11 and 14:**

The discussions above regarding instant independent claims 1, 4, 8, 10 and 11 are relied upon.

The thickness limitations as cited in the instant dependent claims are encompassed by the sleeve thickness range recited in the conflicting '194 dependent claim-4.

Regarding instant **dependent claims 3, 6, 12 and 15**:

The discussions above regarding instant independent claims 1, 4, 10 and 13 are relied upon.

The polymeric film selections as cited in the instant dependent claims are encompassed by the broad "polymer film" recitation of conflicting dependent claim-5.

Regarding instant **dependent claims 7 and 19**:

The discussions above regarding instant independent claims 4 and 18 are relied upon.

The banding element selections as cited in the instant dependent claims would read on the "tab" of the conflicting independent claim-1.

Regarding instant **dependent claim-16**:

The discussion above regarding instant independent claim-13 is relied upon.

The recitation of conflicting dependent claim-5 wherein "laminations and combinations thereof" is cited would encompass the lamination characterized in the instant dependent claim.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francis T. Palo whose telephone number is 703-305-5595. The examiner can normally be reached on T-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles T. Jordan can be reached on 703-306-4159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Francis T. Palo

Francis T. Palo
Examiner
Art Unit 3644

FP